IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 246

CHARLES CORYELL, *et al.*,

Petitioners,

—against—

JOHN S. PHIPPS and GEORGE J. PULKINGTON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

T. CATESBY JONES,
LEONARD J. MATTESON,
Proctors for Petitioners.

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

CHARLES CORYELL and forty-five other boat owners petitioning this Court for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, against respondents John S. Phipps and George J. Pilkington, respectfully show:

Statement of Matter Involved.

This is a suit in admiralty instituted by petitioners in the United States District Court for the Southern District of Florida against respondents Phipps and George J. Pilkington* to recover damages for destruction of some 45 vessels owned by petitioners, as a result of a fire which

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* The claim against Pilkington, operator of the storage basin, was not pressed in the Circuit Court of Appeals and is not pressed here.

occurred on June 24, 1935, while the vessels were afloat at Pilkington's covered storage basin, Fort Lauderdale, Florida, which originated in an explosion on the yacht "Seminole", then registered in the name of Seminole Boat Company.

Both Courts below concurrently found that the fire was caused by an explosion of gasoline fumes, which fumes had escaped into the engineroom of the "Seminole". Both Courts also found that the gasoline fumes which were in the engineroom of the "Seminole" came into that compartment as a result of the leaky condition of the "Seminole's" gasoline tanks and installation; and that this leaky condition was the result of "the passage of time" (R. 3587-8, 3648). Both Courts then held that the Seminole Boat Company was liable for the damage sustained by your petitioners because of the negligence found, but that Phipps was not liable (R. 3588, 3648). This holding resulted in a denial of all recovery to the petitioners because the Seminole Boat Company was an empty shell.

The case is brought to the attention of this Court because it is the confident belief of counsel for petitioners that if the decisions below are permitted to stand, yacht and other boat owners will be encouraged to utilize the fiction of corporate ownership without actual corporate independence, as a means of escaping liability for failure to take ordinary care to avoid injury to life and property.

The facts in connection with the corporate ownership of the "Seminole" are as follows:

The yacht "Seminole", until February 16, 1929, was registered at the Custom House at Miami as being solely owned by the respondent, John S. Phipps (Exhs. 30, 31, 32, Certificates of License). The District Court found, that prior to February 1915, the yacht "Seminole" had been owned by H. C. Phipps, a brother of the respondent Phipps; that at that time the respondent Phipps bought from his brother a one-half interest in the vessel; that she was then propelled by steam; and that in the year 1922, her steam plant was removed and gasoline engines and

their necessary appurtenances installed (Fdg. 2, R. 3582). In late 1928 or early 1929, the two brothers each sold their one-half interest in the "Seminole" to Seminole Boat Company, a Delaware corporation, which had been formed by them for the purpose of taking title to the "Seminole" and operating her under charter for hire, each receiving one-half of the outstanding stock of the company. The "Seminole" was, in fact, chartered on several occasions in 1929 and 1930 but no charterer was actually found for her after 1930 or for more than five years preceding the fire (Fdg. 3, R. 3583).

The officers and stockholders of the corporation were Paul Scott, R. C. Alley and Roy H. Hawkins. These men, as officers of the corporation, assisted by James F. Riley, and advised by certain boat captains, operated, controlled, maintained and managed the vessel from the time of her purchase by the corporation down to and including the time of the fire (Fdg. 4, R. 3583).

In March 1935, when an opportunity to sell the vessel arose, H. C. Phipps wished to sell but respondent Phipps did not. Mrs. Amy Guest, a sister of H. C. and John S. Phipps, thereupon purchased the interest of H. C. Phipps. No other change in the operation, control, maintenance or management of the vessel occurred prior to the fire (Fdg. 5, R. 3584).

Scott, Alley and Hawkins were selected by respondent Phipps and his brother to be officers and directors of the corporation Seminole Boat Company. They, as well as Riley were so-called family representatives of the Phipps (R. 1911, 1944, 1956) and were employees of certain other corporations in which the Phipps family were the shareholders and principals (R. 1355, 1478-81, 1590-1). As such, they were subject to the orders of the respondent Phipps and his brother, and subject to their call, as well as that of other members of the family, to attend to their personal business matters (R. 1451-2, 1477, 1485-6, 1582). These men were not stockholders and had no interest in the Seminole Boat Company (R. 1363), nor did they receive any compensation from Seminole Boat Company

(R. 1582-3). Their salaries were paid by the general paymaster of the Phipps' interests (R. 1353-4, 1486) and no part of such salaries were charged to Seminole Boat Company (R. 1354-5, 1486, 1582-3). Their services to Seminole Boat Company were gratuitous and undertaken for the accommodation of the Phipps (R. 1395).

The corporation was not furnished with capital funds necessary for an independent corporate existence. The only cash paid into its treasury upon organization was $100, a nominal payment of $50 from each of the stockholders. Its bank account was closed after June 2, 1931 because it was so inactive (R. 1472, 1477). The bills of the corporation for expenses of the vessel were paid by other Phipps corporations and charged on their books to Seminole Boat Company (R. 1281, 1324-5) until repaid periodically directly by the stockholders of the corporation. The corporate books contained only a record of such repayments by the stockholders made long after the debts were incurred. Respondent's own summary of the method by which the corporation was financed, Exhibit 4D, is printed as Appendix A to this petition and brief.

The family representatives of the Phipps performed no different functions toward the "Seminole" after incorporation than they had before that event or than they performed toward other vessels owned by respondent Phipps and members of his family which were not incorporated (R. 1361, 1368-70, 1398-9, 1454, 1584-6, 1532, 1596-7). They consulted with the stockholders and acted pursuant to their directions on all except minor routine matters, including the proposed sale of the "Seminole", and the purchase of a tender for that vessel (R. 1282-3, 1381-2, 1297-9, 1300-1, 1333, 1886-7).

Due to the fact that the corporation had no funds of its own and was dependent on the payment of its debts and expenses by the stockholders (R. 1400, 1941) the officers of the corporation could not incur expenses for more than nominal sums without express authority from the stockholders. Hawkins said the limit was $500

(R. 1380-1); Riley, $300. (R. 1505); see for instance authorization of $300 for repair of generator (R. 1505-6, 1596, Exh. 3T1, R., Vol. VI, p. 18).

The respondent Phipps continued throughout the existence of the corporation and the vessel to make personal use of the "Seminole" whenever he desired to do so (R. 340, 1387, 1898-9, 1915, 438, 507, 1507-8, 1643-7, 1917). He merely informed the officers of his wishes (R. 1914-5) and they recognized his authority (R. 1387-8). The only limitation on his right to use the vessel which he recognized was his personal preference for charter money if a charter was available (R. 1915; see also R. 1886). For several years after the incorporation, the yacht "Seminole" continued to be registered with the New York Yacht Club as the personal yacht of respondent Phipps (R. 1905, 1965-7; Answer (i) R. 89). Respondent Phipps defended the action on the ground that Seminole Boat Company was the actual owner and operator of the "Seminole", and that he (respondent Phipps) was not.

Respondent Phipps also set up the defense of limitation of liability under Sections 4283 and 4284 of the Revised Statutes of the United States and the statutes supplementary thereto and amendatory thereof (R. 61).

Your petitioners contended that the officers and directors of the corporation selected by respondent Phipps to manage and operate his vessel, and Riley, to whom they entrusted complete control and management of the vessel for a long period before the fire, were the *alter ego* of respondent Phipps; that their negligence, knowledge and privity were the negligence, knowledge and privity of the respondent Phipps; that their failure to provide an adequate system of inspection by competent persons, and proper maintenance, constituted negligence, knowledge and privity on their part which was in legal effect the negligence, knowledge and privity of the respondent Phipps precluding limitation of liability; and that respondent Phipps could in no event establish his claim for limitation of liability without showing that the persons appointed by him to manage the vessel were competent.

Respondent's evidence failed to show any qualification or previous experience of the officers and directors of the corporation, Scott, Alley and Hawkins, for management of the yacht "Seminole" or any vessel property. Beginning in April 1931, by direction of Scott, President of the corporation, the "Seminole" was placed in storage at Fort Lauderdale and subsequent thereto, she was continuously in storage up to the time of the fire except for only four brief occasions. By direction of Scott, the vessel, while in storage, was placed in the "control and management" of Riley, who was instructed "to inspect her regularly" (R. 1454-7, 1472, 1480). Riley conceded his inexperience and incompetence to inspect the vessel (R. 1595-6; see also R. 1637, 1640-1).

Petitioners contended further that the fact that with the passage of time some part of the machinery did leak with the result that gasoline fumes entered the engine-room and caused the fire, as concurrently found by both of the lower Courts (R. 3587-8, 3648) was, in itself, proof of the incompetence of the persons appointed by Phipps to manage the vessel and of failure to inspect, or to provide an adequate system of inspection. Such a condition could not otherwise come into being.

Conclusions of the District Court With Respect to Liability of the Respondent Phipps.

The District Court held that in spite of the circumstances of the organization and control of Seminole Boat Company by the respondent Phipps and his brother shown by the respondent's evidence, Seminole Boat Company acted "as a legal non-conductor between Phipps on the one hand and the libellants and Pilkington on the other, *because there was no fraud or other improper conduct or purpose in the creation or continued existence of the corporation*"* (R. 3589). Under "Discussion", the Court said:

"The organization of the corporation, Seminole

* Italics in quotations ours throughout this petition and brief.

> Boat Company, was a natural normal development of ownership of a pleasure yacht, *free from any fraud or ulterior motive in the inception of its chartering and creation.* Likewise, it was free of any of the other elements, treated in the reported and cited cases *incident to the presence of bad faith*, which apply the doctrine of piercing the corporate veil" (R. 3587).

The Court said further:

> "Furthermore, the character of the negligence which this record discloses is the failure to do or perform a duty, or nonfeasance. Such failure of duty does not give rise to an application of the *alter ego* or agency doctrine" (R. 3587).

The District Court further held that even if the liability were held to be that of the respondent Phipps "*the character of negligence shown by this record* was such that Phipps, as an individual, would not be precluded from asserting as a limitation of liability under the statute" (R. 3588).

The District Court therefore dismissed the libel.

Conclusions of the Circuit Court of Appeals With Respect to Liability of the Respondent Phipps.

Upon appeal to the Circuit Court of Appeals that Court held that since appellants' vessels sustained damage by reason of the negligence of Seminole Boat Company "in order to hold Phipps to personal liability, appellants had the burden of establishing by a preponderance of the evidence, that the corporation was *an artifice and a sham designed to execute illegitimate purposes* in abuse of the corporate fiction and the immunity that it carries, and that its activities in reality were those of Phipps personally" (R. 3648).

The Circuit Court of Appeals on the question of limitation of liability held independently of the District Court that "the evidence affirmatively establishes that no actual privity to or knowledge of the defective condition obtain-

ing upon the 'Seminole' was attributable to Phipps personally and that none could be imputed to him *since he had exercised due care and diligence in selecting competent men to man the vessel*, and had imposed upon them full duties as to inspection and maintenance of her" (R. 3649).

The District Court made no finding with respect to the competence of the men selected by the respondent Phipps to manage the vessel. The District Court found only that the "nature of the negligence" (R. 3588), *i. e.*, non-feasance as opposed to misfeasance (R. 3587) was not such as to preclude the respondent Phipps from limitation of liability. Consequently the finding that these men were competent is not a concurrent finding.

The Circuit Court of Appeals in its cursory examination of the record failed to note that there is no evidence whatever in the record of the competence or experience of the officers and directors, *i. e.*, Scott, Alley and Hawkins, and that Riley, who was entrusted by them with control and management of the vessel and the duties of regular inspection, was concededly inexperienced and incompetent.

The decisions of both the District Court and the Circuit Court of Appeals holding that the negligence was solely that of Seminole Boat Company and that the respondent Phipps is not liable for any acts or omissions of the Seminole Boat Company or of the officers and directors thereof selected by him are based on the erroneous principle that the corporation created by the respondent Phipps and his brother will serve as a "legal nonconductor" and an insulator against liability *unless fraud or other improper conduct or purpose* in the creation or continued existence of the corporation be shown, or unless it be established that the corporation was *an artifice and a sham designed to execute illegitimate purposes* in abuse of the corporate fiction and the immunity that it carries.

The decisions of both Courts are in conflict with the decisions of the Circuit Courts of Appeal in other cir-

cuits and of this Court. The Circuit Courts of Appeal in the other circuits have followed the principle laid down by this Court in the line of cases of which the following are examples:

U. S. v. *Lehigh Valley R. R. Co.*, 220 U. S. 257;
McCaskill Co. v. *U. S.*, 216 U. S. 504;
Linn Timber Co. v. *U. S.*, 236 U. S. 574;
Southern Pacific Co. v. *Lowe*, 247 U. S. 330;
U. S. v. *Reading Co.*, 253 U. S. 26;
Gulf Oil Corp. v. *Llewellyn*, 248 U. S. 71;
Chicago, Milwaukee & St. Paul R. R. Co. v. *Minn. Civic Assn.*, 247 U. S. 490;
Davis v. *Alexander*, 269 U. S. 114;
Gregory v. *Helvering*, 293 U. S. 465;
Consolidated Rock Co. v. *DuBois*, 312 U. S. 510, 524.

In none of these cases is "fraud" or "other improper conduct or purpose" or "illegitimate purpose" made a test of liability of the parent (individual or corporate) of a corporation. On the contrary, they have held that *domination and control* of the subsidiary by the parent creates liability on the part of the parent for the liabilities of a creature corporation which is regarded as the mere corporate agent or instrumentality or puppet of the parent. The rule was stated by this Court in *Chicago, Milwaukee and St. Paul R. Co.* v. *Civic Ass'n.*, 247 U. S. 490, at page 501, as follows:

> "where stock ownership has been resorted to, not for the purpose of participating in the affairs of the corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies", * * * "the courts will not permit themselves to be blinded or deceived by mere forms of law, but regardless of fictions, will deal with the substance of the transaction involved as if the cor-

porate agency did not exist and as the justice of the case may require."*

The Circuit Court of Appeals for the Fourth Circuit in the case of the *Willem van Driel, Sr.* (C. C. A. 4), 252 Fed. 35, certiorari denied 248 U. S. 566, held the Pennsylvania Railroad Company liable for negligence of a controlled subsidiary, Central Elevator Company, in the operation of a grain elevator which caught fire with the result that the "Willem van Driel, Sr." and other vessels were damaged through spread of the fire. That Court held (pp. 37-8) that the liability of the Pennsylvania Railroad Company

> "depends upon the question of fact whether the elevator company although in the name and organization a distinct corporation, was in substance a mere corporate agent or instrumentality of the Pennsylvania Railroad Company. *So. Pac. Terminal Co.* v. *Int. Comm. Com'n*, 219 U. S. 523, 31 Sup. Ct. 279, 55 L. Ed. 310; *Joseph R. Foard Co.* v. *State of Maryland*, 219 Fed. 827, 135 C. C. A. 497; *Lehigh Valley R. Co.* v. *Delachesa*, 145 Fed. 617, 76 C. C. A. 307."

After discussing the facts showing that the subsidiary corporation was "completely under the control of the dominant corporation", the Court said at page 39:

> "Applying the language of Judge Wallace in *Lehigh Valley Railroad Co.* v. *DuPont*; 128 Fed. 840, 64 C. C. A. 478, the potential and ultimate control of all its property and business affairs of the elevator company was lodged in the railroad company, and this control was exercised as completely and as directly as the machinery of corporate organisms would permit. Such complete dominance and control by the railroad company made the elevator company its mere puppet. *United States* v. *Del. Lack. & West. R. R.*, 238 U. S. 516, 35 Sup. Ct. 873, 59 L. Ed. 1438 (252 Fed. 38, 39)."

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* This statement as repeated in *U. S.* v. *Reading Co.*, 253 U. S. 26, 62, 63, while made with respect to a case involving the commodities clause, has as pointed out by Frank, *C. J.*, "become a classic statement applied generally in cases piercing the corporate veil". *Weisser* v. *Mursam Shoe Corp.*, 127 F. (2d) 344, 346, note 4.

The Circuit Court of Appeals for the Fourth Circuit followed its decision in the *Willem van Driel, Sr.* by others to the same effect, *Luckenbach S. S. Co., et al. v. W. R. Grace & Co., Inc.* (C. C. A. 4), 267 Fed. 676, 681; *The Centaurus* (C. C. A. 4), 291 Fed. 751.

The Circuit Court of Appeals for the Second Circuit in the case of *Lehigh Valley R. R. Co.* v. *DuPont* (C. C. A. 2), 128 Fed. 840, held that Lehigh Valley Railroad Company was liable for damages resulting from an accident which occurred on the line of its subsidiary Eaton & Amboy R. R. Co. In that case the Court said at page 845:

> "The title to the franchises, privileges and property of the Eaton & Amboy Railroad Company was vested in that corporation, and the railroad upon which the deceased was killed was operated and maintained financially and physically by that corporation; but the potential and ultimate control of all its property and business affairs was lodged in the defendant [Lehigh Valley Railroad Company] and this control was exercised as completely and as directly as the machinery of corporate organisms would permit."

To the same effect are—

Lehigh Valley R. R. Co. v. *Delachesa* (C. C. A. 2), 145 Fed. 617; and
Costan v. *Manila Electric Co.* (C. C. A. 2), 24 F. (2d) 383, 384.

The Circuit Court of Appeals for the Second Circuit recently applied the same doctrine in the case of *Weisser* v. *Mursam Shoe Corporation, et al.* (C. C. A. 2), 127 F. (2d) 344 (decided April ~~27, 1942 by~~ Frank, *C. J.*).

The decisions in the *Willem van Driel, Sr.*, *Luckenbach S. S. Co.* v. *W. R. Grace & Co. Inc.*, and *Costan* v. *Manila Electric Co.*, *supra*, were cited by this Court as recently as in the case of *Consolidated Rock Co.* v. *DuBois*, 312 U. S. 510, 524.

In the case of *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776, 780, the Circuit Court of Appeals for the Ninth Circuit held that the operating company of the vessel named was the *alter ego* of the owner on evidence showing that the companies involved "constituted a family affair".

The Circuit Court of Appeals for the Sixth Circuit in the case of *In re Lakes Transit Corporation and James Playfair* (C. C. A. 6), 81 F. (2d) 441, held that Playfair was personally liable as owner of the vessel involved, although title was held by a corporation in which Playfair and his family owned 90% of the stock.

The law in the Second, Fourth, Sixth and Ninth Circuits is that when a corporation is controlled by shareholders in such a manner that the corporation has no independent existence, the shareholders are the real parties in interest and are liable for the tortious acts of the corporation.

If the decision below is permitted to stand, the law in the Fifth Circuit is that in such a case to hold the stockholders, an injured person must establish "by a preponderance of the evidence, that the corporation was *'an artifice and a sham designed to execute illegitimate purposes* in abuse of the corporate fiction and the immunity that it carries". There is no requirement of any such showing in the Second, Fourth, Sixth and Ninth Circuits or under the decisions of this court.

There is also a conflict between the decisions of the Circuit Court of Appeals in the instant case and the decisions of the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits on the question of limitation of liability. The Circuit Court of Appeals for the Fifth Circuit in the instant case held that the respondent Phipps, if liable personally, was entitled to limitation of liability under Sections 4283 and 4284 of the Revised Statutes and amendatory acts, because—

> "the evidence affirmatively establishes that no actual privity to or knowledge of the defective condition

obtaining on the Seminole was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to handle the vessel, and had imposed upon them full duties as to inspection and maintenance of her" (R. 3649).

The decisions of the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits hold on the contrary that where the owner (in legal effect) of a vessel has appointed agents to manage his vessel and has "imposed on them full duties as to inspection and maintenance", the agents so appointed are the *alter ego* of the owner and their negligence, knowledge and privity are attributable to the owner and will preclude limitation of liability.

The decision below is, therefore, in conflict with the decision of the Circuit Court of Appeals for the Second Circuit in the case of *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777. In that case the court held that the petitioner for limitation of liability, Converse, who, under R. S. 4286, in legal effect was the owner of a pile driver since he manned, victualed and navigated the vessel at his own expense, was denied the right to limit liability because of the failure of his superintendent, who was in charge of the inspection and rigging of the barge, to make adequate inspections.

The Court said at page 779:

> "*So the scope of the authority delegated to Heyer by Converse was so broad that his privity or knowledge as to the unseaworthiness of the pile driver was in law that of Converse. Spencer Kellogg & Sons* v. *Hicks*, 285 U. S. 502, 52 S. Ct. 450, 76 L. Ed. 903; *In re P. Sanford Ross* (C. C. A.), 204 F. 248; *Chesapeake Lighterage & Towing Co., Inc.* v. *Baltimore Copper Smelting & Rolling Co.* (C. C. A.), 40 F. (2d) 394; *Boston Towboat Co.* v. *Darrow-Mann Co.* (C. C. A.), 276 F. 778."

The decision below is also in conflict with that of the Circuit Court of Appeals for the Ninth Circuit in *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776, where that Court dealing with a similar situation, said at page 780:

> "In proceedings for limitation the owner may not escape liability by giving the managerial functions to an employed person acting as its agent, *whether the person be corporate or otherwise. So far as concerns privity and knowledge, such an agent is its alter ego, Craig* v. *Continental Ins. Co.*, 141 U. S. 638, 648, 12 S. Ct. 97, 35 L. Ed. 886; *Eastern S. S. Corporation* v. *Great Lakes Dredge Co.* (C. C. A. 1), 256 F. 497, 502. *Sperry Flour Co.* v. *Coastwise S. S. Co.* (C. C. A. 9), 84 F. (2d) 785, 786."

The decision below is likewise in conflict with that of the Circuit Court of Appeals for the Sixth Circuit in *In re Lakes Transit Corporation, Ltd. and James Playfair* (C. C. A. 6), 81 F. (2d) 441. After holding that Playfair was in substance the owner of the vessel and liable as such, although title was held by a corporation which Playfair controlled and in which he and his family owned more than 90% of the stock, the court held that the knowledge and privity of the corporation's superintendent, Captain Burke, was the knowledge and privity of Playfair. The Court said at page 444:

> "* * * Playfair was not entitled to limitation until he had proved lack of his privity or knowledge of the defect causing the loss. This he failed to do. The evidence shows that the primary cause was the broken sea cock. The trial court found that the defective door was a contributing cause. If that be true, the right to limitation of damages resulting therefrom is barred under the personal contract rule and, in any view because Playfair had knowledge of the defect. *The statute does not require that knowledge be actual; it may be imputed if some one in charge for the owner had general authority to act for him and by the exercise of ordinary care could have discovered the fault. Craig* v. *Continental Insurance Co.*, 141 U. S. 638; 12 S. Ct. 97, 35 L. Ed. 886; *Spencer Kellogg & Sons, Inc.* v. *Hicks*, 285 U. S. 502; *In re Sanford Ross* (C. C. A.), 204 Fed. 248;

Texas & Gulf S. S. Co. v. *Parker* (C. C. A.), 263 Fed. 864; *Pocomoke Guano Co.* v. *Eastern Transp. Co.* (C. C. A.), 285 Fed. 7; *Chesapeake Lighterage & Towing Co., Inc.* v. *Baltimore Copper Smelting & Rolling Co* (C. C. A.), 40 Fed. (2d) 394. Captain Burke, th superintendent for Playfair was present when the floor was repaired and could have known whether the repairs were sufficient to make the barge seaworthy."

The decision of the District Court in this case is further in conflict with the decisions of the other circuits in that it held that the nature of the negligence which caused the disaster, that is, non-feasance as opposed to positive negligence (R. 3587) was not such as to preclude the respondent Phipps from asserting limitation of liability under the statute (R. 3588). That negligence which, under the decision of the District Court was neglect and failure of inspection as a result of which, with the passage of time, the gasoline tanks became leaky (R. 3587-8) was, as the District Court found "the failure to do or perform a duty" (R. 3588), that is, the duty of inspection and the provision of an adequate system of inspection by competent persons. The Circuit Courts of Appeal in other circuits hold that the failure of the duty of inspection and the provision of an adequate system of inspection by competent persons results in imputed knowledge and privity with respect to defective conditions which requires the denial of a claim for limitation of liability.

The Circuit Court of Appeals for the Fourth Circuit in *Chesapeake Lighterage & Towing Co.* v. *Baltimore Copper Smelting & Rolling Co.* (C. C. A. 4), 40 F. (2d) 394, at page 395, said:

"For authorities on the law that control the question as to the privity or knowledge of the owner, reference to *The Virginia* (D. C.), 264 F. 986, *Sorenson et al.* v. *Boston Insurance Co. of Boston, Mass.*, 20 F. (2d) 640, and *Bank Line* v. *Porter* (*The Poleric*), 25 F. (2d) 843, will show the rule as laid down by this court. Under these decisions the judge below

rightly held that *the superintendent of the appellant company could by proper inspections have discovered the unseaworthiness of the barge, and that the appellant was therefore chargeable with knowledge of such unseaworthiness.*"

The Circuit Court of Appeals for the Second Circuit (Ward, *C. J.*) in the case of *The Loyal* (C. C. A. 2), 204 Fed. 930, in denying a petition for limitation of liability, said at page 933:

> "There is no proof of any regular system of inspection by any one, or *that its managing officers relied upon a competent person, to whom the duty of regular inspection was committed.*"

See also:

The Republic (C. C. A. 2), 61 Fed. 109;
In re P. Sanford Ross (C. C. A. 2), 204 Fed. 248;
Dexter-Carpenter Coal Co. v. *New York O. & W. Ry. Co., et al.* (S. D. N. Y.), 50 F. (2d) 270;
The Miami (E. D. N. Y.), 43 F. (2d) 562.

The Circuit Court of Appeals for the Ninth Circuit in the case of *Parsons* v. *Empire Transportation Co.* (C. C. A. 9), 111 Fed. 202, in denying limitation of liability to the vessel owner said at page 207:

> "So that Paterson, an inexperienced man with full knowledge on the part of the appellee's general manager for the Pacific Coast, was allowed to act as general superintendent of all its business at St. Michael, including the control of the entire fleet in those waters."

The finding of the Circuit Court of Appeals in the instant case that the respondent Phipps "had exercised due care and diligence in selecting competent men to man the vessel and had imposed on them full duties as to inspection and maintenance of her (R. 3647) is not supported by any evidence in the record. As we have pointed out, it is not a concurrent finding for the decision of the District Court was placed on an entirely different

ground. Since this finding by the Circuit Court of Appeals is without any support in the evidence and since the finding by the District Court was that the nature of the negligence, that is, "failure to do or perform a duty" (R. 3587) was not of a character to preclude limitation of liability (R. 3588), a direct conflict is presented between the decision of the District Court in this case and the decisions in the Second, Fourth and Ninth Circuits which should be resolved by this Court.

The Questions Presented.

The questions presented are:

1. Whether the individual owner of a yacht can escape his responsibilities and liabilities as such owner and secure insulation from liability by forming a corporation to own his vessel

(a) When the corporation is not supplied with capital funds necessary for corporate independence;

(b) When the corporation is officered by individuals of his own choosing who

1. are personally holden to him and obligated by virtue of their situations to do his bidding and to attend to his personal business;
2. receive no compensation from the corporation for their services;
3. have no interest in the corporation;
4. are limited in their discretion and in the management of the vessel by the fact that the corporation has no funds of its own and is dependent on the stockholders for the payment of its debts, and the officers must therefore consult with the stockholders before expenditure of any more than nominal sums.

(c) When the corporation is without credit of its own, and is dependent for its existence upon the credit of the stockholders who annually pay its debts, which are paid

in the first instance by other corporations controlled by the stockholders, such debts aggregating over a period of a few years several times the value of the vessel, the sole corporate property.

(d) When such owner retains control and use of the yacht and continues to use the yacht as desired for his personal pleasure, the corporate officers without corporate action recognizing his right, and such owner acknowledges no limitation of that right except his personal preference for charter hire when a charter is available.

2. (a) Whether an owner of a vessel can escape the imputation of knowledge and privity inherent in a dangerous condition of the vessel caused by progressive deterioration of machinery and equipment which leaked, and tanks which became "defective" and "leaky" with the passage of time, by the appointment of agents, competent or otherwise, to whom he transfers "full duties" of "inspection and maintenance"?

(b) Whether an agent, to whom an individual owner of a vessel transfers all his duties and responsibilities for inspection and maintenance of his vessel, is not the *alter ego* of such owner and whether the negligence, knowledge and privity of such an agent, or agents, is not the negligence, knowledge and privity of such owner as held by the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits.

3. Whether the failure of an owner to provide for competent management and proper inspections and for an adequate system of inspection of his vessel by competent persons does not require the denial of limitation of liability on the ground of privity and knowledge as held in the Second, Sixth and Ninth Circuits?

Reasons for the Allowance of the Writ.

1. The decision of the Circuit Court of Appeals for the Fifth Circuit in this case holding that to establish personal liability on the part of the respondent Phipps, your petitioner "had the burden of establishing by a preponderance of the evidence, that the corporation was an artifice and a sham designed to execute illegitimate purposes in abuse of the corporate fiction and the immunity that it carries, and that its activities in reality were those of Phipps personally" is

(a) in direct conflict with the decisions of this Court in the following cases:

Davis v. *Alexander*, 269 U. S. 114;
Chicago, Mil. & St. Paul R. R. Co. v. *Minn. Civic Ass'n.*, 247 U. S. 490;
U. S. v. *Lehigh Valley R. R. Co.*, 220 U. S. 257;

and other cases cited *supra*, page 9.

(b) in direct conflict with the decisions of the Circuit Courts of Appeal for the Second, Fourth, Sixth and Ninth Circuits in the following cases:

Lehigh Valley R. R. Co. v. *DuPont* (C. C. A. 2), 128 Fed. 840;
Lehigh Valley R. R. Co. v. *Delachesa* (C. C. A. 2), 145 Fed. 617;
Costan v. *Manila Electric Co.* (C. C. A. 2), 24 F. (2d) 383, 384;
The Willemvan Driel, Sr. (C. C. A. 4), 252 Fed. 35, certiorari denied 248 U. S. 566;
Luckenbach S. S. Co., et al. v. *W. R. Grace & Co., Inc.* (C. C. A. 4), 267 Fed. 676, 681;
In re Lakes Transit Corp. and James Playfair (C. C. A. 6), 81 F. (2d) 441;
The Silverpalm (C. C. A. 9), 94 F. (2d) 776.

2. The decision of the Circuit Court of Appeals for the Fifth Circuit that the respondent Phipps, if liable, is entitled to limitation of liability on the ground that no actual privity or knowledge of the defective condition of the yacht "Seminole" was attributable to him "since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed upon them full duties as to inspection and maintenance of her", is in direct conflict with the decisions of the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits in the following cases:

In re New York Dock Co. (C. C. A. 2), 61 F. (2d) 777;

In re Lakes Transit Corporation and James Playfair (C. C. A. 6), 81 F. (2d) 441;

The Silverpalm (C. C. A. 9), 94 F. (2d) 776.

3. The decision of the District Court for the Southern District of Florida in this case that the character of the negligence shown by the record in this case, that is "failure to do or perform a duty", which duty was to provide for competent management and proper inspection and for an adequate system of inspection of the vessel by competent persons, is in square conflict with the decisions of the Circuit Courts of Appeal in the Second, Sixth and Ninth Circuits in the following cases:

The Loyal (C. C. A. 2), 204 Fed. 930;

Dexter-Carpenter Coal Co. v. *New York O. & W. Ry. Co., et al.* (S. D. N. Y.), 50 F. (2d) 270;

The Miami (E. D. N. Y.), 43 F. (2d) 562;

Chesapeake Lighterage & Towing Co., Inc. v. *Baltimore Copper & Rolling Co.* (C. C. A. 4), 40 F. (2d) 394;

Parsons v. *Empire Transportation Co.* (C. C. A. 9), 111 Fed. 202, 207.

The Importance of the Question Involved.

If this decision is permitted to stand, it will constitute an invitation to all owners of yachts or of similar vessel property to incorporate, without providing any working capital or other means for the corporation to maintain its independence, for the purpose of escaping liability for all torts. This decision virtually guarantees immunity in the Fifth Circuit to such incorporators even in those cases of neglect, where through deterioration of a gasoline installation as a result of "the passage of time", a vessel burning that dangerous fuel becomes a public nuisance. Under this decision, an owner of such craft by incorporating and then neglecting the property transferred to such corporation may escape all liability in case of an explosion resulting from neglect and rest easily in confidence that the Court will not disturb his repose under the corporate veil.

WHEREFORE petitioners pray that this Court issue a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit directing it to send to this Court for review a full transcript of the record in the said Circuit Court of Appeals in the case entitled: Charles Coryell, et al., Libellants-Appellants, against John S. Phipps and another, Respondents-Appellees, No. 10185, and that the decision of the said Circuit Court of Appeals rendered on the 9th day of June, 1942 (R. 3645) and the decree of the District Court entered on the 19th day of June, 1941 (R. 3590) be reversed and for such other relief in the premises as may be just.

Dated, New York, N. Y., July 17, 1942.

CHARLES CORYELL, *et al.*,
Petitioners.

T. CATESBY JONES,
LEONARD J. MATTESON,
Proctors for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No.

CHARLES CORYELL, *et al.*,

Petitioners,

—against—

JOHN S. PHIPPS and GEORGE J. PILKINGTON,

Respondents.

BRIEF FOR PETITIONERS.

Opinions Below.

The opinion, findings of fact and conclusions of law of the District Court are officially reported 39 F. Supp. 142 and are printed in this record (R. 3582). The opinion of the Circuit Court of Appeals filed June 9, 1942 is not yet officially reported but is printed in this record (R. 3645).

Jurisdiction of this Court.

This is a suit in admiralty instituted by petitioners against the respondents for the recovery of damages due to the destruction by fire of some 45 small yachts or motorvessels stored afloat at Pilkington's covered storage basin, Fort Lauderdale, Florida, on June 24, 1935. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925; 43 Stat. 938, 28 U. S. C. A., Section 347.

The Facts.

The facts are stated in the petition and will not be repeated here.

POINT I.

The Courts below held that stockholders cannot be held liable for torts committed by the corporation unless it be shown that there was "fraud or other improper conduct or purpose in the creation or continued existence of the corporation" or that "the corporation was an artifice and a sham designed to execute illegitimate purposes". The rule in this Court and in the other circuits is that where the corporation is without independence of its stockholders, its act is in fact an act of the stockholders. The decisions below are in square conflict with those of this Court and those in the Second, Fourth, Sixth and Ninth Circuits.

We have shown in the petition, *supra*, pages 8-12, that the decisions below, holding that proof of "fraud", "improper conduct or purpose in the creation or continued existence of the corporation", or "artifice and sham designed to execute illegitimate purposes", is an essential prerequisite to piercing the corporate veil, and holding the stockholders liable for the torts of a corporation lacking any of the essentials of corporate independence, and subject to the domination and control of the stockholders, are in conflict with the decisions in the Second, Fourth, Sixth and Ninth Circuits in the following cases:

Lehigh Valley R. R. Co. v. *DuPont* (C. C. A. 2), 128 Fed. 840;

Lehigh Valley R. R. Co. v. *Delachesa* (C. C. A. 2), 145 Fed. 617;

Castan v. *Manila Electric Co.* (C. C. A. 2), 24 F. (2d) 383, 384;

The Willem van Driel, Sr. (C. C. A. 4), 252 Fed. 35, certiorari denied 248 U. S. 566;

Luckenbach S. S. Co., et al. v. *W. R. Grace & Co., Inc.* (C. C. A. 4), 267 Fed. 676;
In re Lakes Transit Corp. and James Playfair (C. C. A. 6), 81 F. (2d) 441;
The Silverpalm (C. C. A. 9), 94 F. (2d) 776.

It is true that fraud is sometimes a ground for piercing the corporate veil and holding the stockholder liable for the debts of the corporation, but it is only in contract cases that such doctrine exists because it is only in such cases that there has been a previous relationship of the parties that admits of fraud. A party who voluntarily enters into a contract with a corporation, knowingly enters into a legal relation with a legal entity of limited liability. He cannot complain of that limited liability, unless it can be shown that he was misled or tricked or fraudulently induced to enter into the contractual relation. Decisions in such cases have no application to the facts of cases involving tort liability. In such cases there is nothing in the legal relations involved which admit of fraud as an element in the legal relations involved. Examples of contract cases where fraud is a proper test are:

Roos v. *Texas Co.* (C. C. A. 6), 43 F. (2d) 1;
New York Trust Co. v. *Carpenter* (C. C. A. 2), 250 F. 668, 673, 678.

See also:

Weisser v. *Mursam Shoe Corp.* (C. C. A. 2), 127 F. (2d) 344, 347, note 6.

Similarly there are cases where an improper purpose in the formation of a corporation may be a sufficient basis for disregarding the corporate entity. The so-called bank stock cases may be cited as examples:

Coker v. *Soper* (C. C. A. 5), 53 F. (2d) 190, certiorari denied 285 U. S. 540;
Harris Inv. Co., et al. v. *Hood* (Fla.), 167 So. 25.

In tort cases the test is, was the corporation in fact an independent entity. The remarks of the District Court concerning fraud as an element to be considered in determining whether the act of the corporation which caused the injury complained of is the act of the stockholders are beside the point. This is also true as to the test applied by the Circuit Court of Appeals of "artifice and sham designed to execute illegitimate purposes". In addition to the decisions cited in the petition from the Second, Fourth, Sixth and Ninth Circuits, the following cases dealing with tort liability show that this is so:

Davis v. *Alexander*, 269 U. S. 114;

Callas v. *Independent Taxi Owners Assn.* (C. C. A.), D. C., 66 F. (2d) 192; certiorari denied 290 U. S. 669;

Mangan v. *Terminal Transportation System, Inc.*, 284 N. Y. S. 183, 157 Misc. 627; aff'd 286 N. Y. S. 666, 247 App. Div. 853; appeal denied 272 N. Y. 676;

Anglaize Box Board Co. v. *Hinton*, 100 Ohio St. 505, 126 N. E. 881;

Joseph R. Foard Co. v. *State* (C. C. A. 4), 219 Fed. 827;

Oriental Investing Co. v. *Barkley*, 64 S. W. 80, 25 Tex. Civ. App. 543;

Erickson v. *Minnesota & Ontario Power Co.*, 134 Minn. 209, 158 N. W. 979;

Specht v. *Missouri Pacific R. R. Co.*, 154 Minn. 314, 191 N. W. 905;

Dixie Coal M. & M. Co. v. *Williams*, 221 Ala. 331;

Ross v. *Pennsylvania Railway Co.* (N. J.), 106 N. J. L. 536, 148 Atl. 741.

See also:

Weisser v. *Mursam Shoe Corp.* (C. C. A. 2), 127 F. (2d) 344 (Opinion with notes by Frank, C. J., April 27, 1942).

No case could illustrate better than the instant case the injustice, and the harmful results, which will follow from the establishment of the rule laid down by the Courts below. Here the owner has successfully, thus far, avoided any responsibility for the operation of the yacht "Seminole" by the creation of a corporation without funds* and with only a single asset, the yacht "Seminole"; by appointing men to officer and direct the corporation, who are in substance his employees in other connections, who are beholden to him personally, and who serve without additional compensation and without interest in the corporation as an accommodation to him as stockholder; and by delegating to such men "full duties as to inspection and maintenance of her" (R. 3649). When under such circumstances "with the passage of time" the yacht's gasoline tanks, always a serious hazard,** through lack of inspection and proper maintenance become defective and leaky and cause an explosion and fire which destroys a large number of vessels owned by innocent parties, we submit, that to grant the immunity of corporate insulation establishes a dangerous precedent and encourages the owners of yacht or other vessel property to employ this devious method of avoiding personal responsibility. Such a result is in itself an abuse of the corporate fiction and the immunity that it carries.

It cannot be said that the question of the control and domination of Seminole Boat Company by respondent Phipps is a question of fact decided by the lower Courts adversely to petitioner. The facts as stated in the petition are undisputed and taken from respondent's own evidence. Neither of the Courts below made any findings as to control and domination of the corporation by the re-

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* As to the importance of supplying a corporate subsidiary with adequate capital funds if corporate insulation is to be obtained, see article entitled "Insulation from liability through Subsidiary Corporations" by William O. Douglas, now a justice of this court, in collaboration with C. M. Shanks. Also *Weisser* v. *Mursam Shoe Corp.* (C. C. A. 2), 127 F. (2d) 344, 348.

** See *Gunnarson* v. *Robert Jacob* (C. C. A. 2), 94 F. (2d) 170, 172 (Learned Hand, *C. J.*).

spondent Phipps because in their view this was not important, in the absence of any showing of fraud or improper purpose in the creation or continued existence of the corporation.

POINT II.

The decision of the Circuit Court of Appeals that the respondent Phipps, if liable, is entitled to limitation of liability on the ground that privity or knowledge of the defective condition of the yacht "Seminole" could not "be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed on them full duties as to inspection and maintenance of her" is in conflict with the decisions in the Second, Sixth and Ninth Circuits.

The Circuit Court of Appeals held that even if respondent Phipps were, in fact, the true owner of the "Seminole", he would be entitled to limitation of liability because "no actual privity to or knowledge of the defective condition obtaining upon the 'Semipole' was attributable to Phipps personally, and that none could be imputed to him since he had exercised due care and diligence in selecting competent men to man the vessel, and had imposed upon them full duties as to inspection and maintenance of her" (R. 3649).

We have shown in the petition, *supra*, pages 12 to 15, that this decision is in direct conflict with the decisions in the Second, Sixth and Ninth Circuits which hold that where the individual owner of a vessel has appointed an agent, or agents, to manage his vessel for him and has "imposed on them full duties as to inspection and maintenance", the agent or agents so appointed are the *alter ego* of the owner, and their negligence, knowledge and privity, actual or imputed, are attributable to the owner and preclude limitation of liability.*

* The pertinent sections of the limitation of liability statutes are printed as Appendix B to this brief.

In re New York Dock Co. (C. C. A. 2), 61 F. (2d) 777, 779;
The Silverpalm (C. C. A. 9), 94 F. (2d) 776, 780;
In re Lakes Transit Corporation, Ltd. and James Playfair (C. C. A. 6), 81 F. (2d) 441, 444.

The argument for the respondent Phipps below conceded that where the vessel is owned by a corporation, the knowledge and privity of a responsible agent of the corporation is attributable to the corporation. It was argued, however, that an individual owner could delegate all his responsibilities as owner, *i. e.*, "full duties as to inspection and maintenance of her", and thus free himself from any imputation of privity and knowledge even though his agents were guilty of gross neglect, thereby assuring himself of the right to limit his liability in all cases. This argument was accepted by the Circuit Court of Appeals and adopted as its ground of decision.

Neither authority nor reason establishes a preferred position for an individual owner with respect to the imputation of knowledge and privity when there has been a complete delegation by the owner to his agent of all the responsibilities for inspection and maintenance of his vessel. In the case of *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776 at page 780, the Court said:

> "In proceedings for limitation the owner may not escape liability by giving the managerial functions to an employed person acting as its agent, *whether the person be corporate or otherwise. So far as concerns privity and knowledge, such an agent is its alter ego. Craig* v. *Continental Ins. Co.*, 141 U. S. 638, 648, 12 S. Ct. 97, 35 L. Ed. 886; *Eastern S. S. Corporation* v. *Great Lakes Dredge Co.* (C. C. A. 1) 256 F. 497, 502. *Sperry Flour Co.* v. *Coastwise S. S. Co.* (C. C. A. 9) 84 F. (2d) 785, 786."

The Circuit Court of Appeals for the Second Circuit in the case of *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777, 779, *supra*, applied this doctrine to an indi-

vidual (chartered) owner imputing to him the knowledge and privity of his superintendent who had been given charge of the inspection and rigging of his barge. Likewise the Circuit Court of Appeals for the Sixth Circuit in *In re Lakes Transit Corp., Ltd. and James Playfair* (C. C. A. 6), 81 F. (2d) 441, 444, imputed to Playfair the knowledge of his superintendent, Captain Burke.

Granting that a vessel owner, individual or corporate, may escape an imputation of knowledge or privity of a competent agent employed to make a particular inspection or to perform a limited function, such as preparing a vessel for a particular voyage, it is nevertheless entirely out of harmony with the spirit and purpose of the limitation laws to permit an owner, individual or corporate, to abdicate all of his functions and responsibilities as owner and delegate them to an agent without accepting responsibility for the acts of that agent.

The cases cited by the Circuit Court of Appeals in Note "2" of its opinion (R. 3649) do not support a contrary view.

In *Lord* v. *Goodall S. S. Co.* (C. C. D. Cal.), Fed. Cas. 8506, the owner was a corporation and the vessel was found in fact seaworthy. The case in this Court (102 U. S. 541) involved only the validity of the Limitation Act. In *The Annie Faxon** (C. C. A. 9), 75 Fed. 312, the owner was a corporation and it does not appear that the owner had delegated all his duties of management and inspection to the agent. If either of these decisions be regarded as in conflict with *The Silverpalm* (C. C. A. 9), 94 F. (2d) 776, they must be considered as overruled in the Ninth Circuit.

Van Eyken v. *Erie R. R. Co.* (E. D. N. Y.), 117 Fed. 712, a District Court decision, and *The Tommy* (C. C. A. 2),

* This and similar cases were criticized in the opinion in *In re Jacobson* (S. D. Tex.), 52 F. (2d) 179, 180, by Hutcheson, *C. J.*, of the Circuit Court of Appeals for the Fifth Circuit, who did not participate in the decision below.

151 Fed. 570, a decision in the Second Circuit, if considered to be in conflict with the decision in *In re New York Dock Co.* (C. C. A. 2), 61 F. (2d) 777, must be regarded as overruled in the Second Circuit.

In the *84 H* (C. C. A. 2), 296 Fed. 427, the District Court had held there was no negligence but that the petitioner "knew all about the method of conducting business at the 'dump'" (p. 432). The question was whether the District Court should have dismissed the petition or granted a decree of exoneration. The Circuit Court of Appeals held that "where there is no negligence and no fault, privity is a matter of no consequence" and directed the entry of a decree of exoneration (p. 432).

In the cases of *The Alola* (E. D. Va.), 228 Fed. 1006, and *The Oneida* (C. C. A. 2), 282 Fed. 238, there was no failure of inspection and maintenance and the vessel was held to be seaworthy and competently manned. The owner was held to be without privity and knowledge of the negligence of the master in navigating the vessel.

In the case of *Erie Lighter 108* (D. C. N. J.), 250 Fed. 490, the Court held that the vessel had been rebuilt by competent men shortly before the accident (p. 495) and there had been no neglect in respect to inspection from which privity or knowledge could be inferred (p. 496). The Court professed to follow the decisions in the Second Circuit (p. 497). The facts of that case are greatly different from those here, where, with the passage of time, the highly hazardous gasoline tanks of the "Seminole" became defective and leaky due to failure of maintenance and inspection resulting in the destruction of petitioners' vessels.

POINT III.

The decision of the District Court in this case that the character of the negligence shown by the record was such that respondent Phipps as an individual would not be precluded from limitation of liability (R. 3588) is in conflict with the decisions in the Second, Fourth and Ninth Circuits.

The character of the negligence found by the District Court, implicit in its finding that "with the passage of time some part of the machinery or equipment did leak" (R. 3587) and "the defective condition of the tanks made them leaky" (R. 3588), is failure of inspection and maintenance. The District Court described the character of this negligence as "the failure to do or perform a duty, or non-feasance" (R. 3587). Thus the decision of the District Court is placed on a different ground, that is "the character of negligence", than the decision of the Circuit Court of Appeals which was based on the complete delegation to competent agents of "full duties as to inspection and maintenance" (R. 3649). The District Court did not find that the agents were competent and, as a matter of fact, the record contains no evidence of the competence of the officers and directors of the corporation, and Riley to whom they entrusted "control and management" and the duty "to inspect her regularly" (R. 1454-7, 1472, 1480) was concededly both inexperienced and incompetent to inspect the vessel (R. 1595-6; see also R. 1637, 1640-1).

We have shown in the petition (*supra*, pp. 15-17) that the decisions in the other circuits hold that failure on the part of the owner, in his duty to inspect the vessel and to provide an adequate system of inspection by competent persons results in the imputed knowledge and privity of the owner to the defective condition of his vessel which requires the denial of a plea for limitation of liability.

The Loyal (C. C. A. 2), 204 Fed. 930, 933;
The Republic (C. C. A. 2), 61 Fed. 109;

In re P. Sanford Ross (C. C. A. 2), 204 Fed. 248;
Dexter-Carpenter Coal Co. v. *New York, O. & W. Ry. Co., et al.* (S. D. N. Y.), 50 F. (2d) 270;
The Miami (E. D. N. Y.), 43 F. (2d) 562;
Chesapeake Lighterage & Towing Co. v. *Baltimore Copper Smelting & Rolling Co.* (C. C. A. 4), 40 F. (2d) 394, 395; and see.
Parsons v. *Empire Transportation Co.* (C. C. A. 9), 111 Fed. 202;
Benedict on Admiralty, 6th Edition (1940), Vol. 3, under the heading—"When the Shipowner Is an Individual," pages 386-7.

The duty placed on the vessel owner of vigilance and inspection, and to provide an adequate system of competent inspection, particularly with respect to a vessel of so hazardous a type as the "Seminole", carrying quantities of highly volatile and dangerous fuel such as gasoline in tanks, which has been emphasized so strongly by the Circuit Courts of Appeal in the other circuits, is intended to guard against just such disasters as that which resulted from the fire and explosion on the "Seminole". Where the courts below have concurrently found that this explosion resulted from the leakage of gasoline fumes into the engineroom from tanks which had become leaky and defective "with the passage of time", we submit the purpose and spirit of the limitation laws are violated if the owner is granted limitation of liability because the negligence found is the "failure to do or perform a duty, or non-feasance" as opposed to "an act of positive negligence" (R. 3587).

CONCLUSION.

Because the decisions of the Courts below are in conflict with the decisions of this Court and of the Circuit Courts of Appeal for the Second, Fourth, Sixth and Ninth Circuits; because the decisions granting corporate insulation to the stockholder of an incorporated yacht, the corporation lacking the fundamentals of corporate independence, involves an important principle of wide application affecting the liabilities of yacht and vessel owners generally and encourages the avoidance of liability for gross neglect in the operation of such vessels through the use of the corporate form; and because the decisions below are on an important principle of maritime law of wide application relating to the limitation of liability of vessel owners and encourage the owners of yachts and other vessel property to avoid their liabilities resulting from gross neglect by complete delegation of their duties and responsibilities as such owners, we respectfully submit that a writ of certiorari should be granted in order that the questions herein may be definitely and finally decided.

Respectfully submitted,

T. CATESBY JONES,
LEONARD J. MATTESON,
Proctors for Petitioners.

Appendix A.

EXHIBIT 4D.

ANALYSIS OF OPERATION OF SEMINOLE BOAT COMPANY

PERIOD OCTOBER 11, 1928 THROUGH DECEMBER 31, 1935

On November 11, 1928 the records of account for Seminole Boat Company were set up with Journal Entry #1 recording the subscription payment and issuance of 10 shares of its capital stock as follows:

S. L. Mackey	4 shares
L. C. Chester	3 shares
H. Kennedy	3 shares

On November 20, 1928, an account was opened with the First National Bank, Miami, Florida depositing $100.00, being the proceeds from the sale of the above listed stock.

The Boulevard Mortgage Company made cash advances to Seminole Boat Company, also paid sundry expense items for its account. Both the cash advances and disbursements for sundry expenses were set up on Seminole Boat Company records as Accounts Payable to Boulevard Mortgage Company. From time to time the Messrs. J. S. and H. C. Phipps would reimburse Boulevard Mortgage Company for such items—one-half each. When such reimbursements were made the Seminole Boat Company would, by journal entry, transfer its liability to Boulevard Mortgage Company to the Messrs. J. S. and H. C. Phipps.

The cash advances by Boulevard Mortgage Company and other cash receipts were deposited in Seminole Boat Company's bank account with First National Bank, Miami. From this account were paid the principal operating expenses to June 2, 1931. On this date the bank account was closed and Boulevard Mortgage Company paid all operating expenses to December 31, 1933. Palm Beach Company then paid all operating expenses from this date on. The Messrs. J. S. and H. C. Phipps reimbursed Boulevard Mortgage Company and Palm Beach Company for such expenses to December 31, 1934. Their reimbursements were handled as stated in above paragraph. Mrs. Guest acquired the one-half interest of Mr. H. C. Phipps on March 23, 1935, Mrs. Guest assuming his one-half of the expenses for period January 1, 1935 through March 23, 1935. Mrs. Guest and Mr. J. S. Phipps reimbursed Palm Beach Company for expenses to March 23, 1935—one-half each.

With the foregoing in mind the following analysis is made:

YEAR 1928:

Cash Receipts

Subscription to Capital Stock	$ 100.00	
Cash advanced by Boulevard Mortgage Company	400.00	$ 500
Less:		
Expenses paid through bank account recording abstracts, etc.	45.31	
Painting	103.08	
Storage	75.00	223
Cash balance 12-31-28		$ 276
Other Expenses paid directly by Boulevard Mortgage Company:		
Organization Expense	98.76	
Painting	9.50	
Storage	168.30	
	276.56	
Expense paid through Bank Account	223.39	
TOTAL OPERATION EXPENSES YEAR 1928	$ 499.95	

YEAR 1929

Cash Receipts:

Advances by Boulevard Mortgage Co.	$ 9,850.00	
Proceeds from Charter	8,554.38	
Rebates, Accounts Receivable, etc.	2,004.51	
	$20,408.89	
Less Reimbursement to Boulevard Mortgage Co.	5,700.00	
	$14,708.89	
Less cash advanced to W. P. Baker outstanding 12-31-29	500.00	14,208
		$14,485

Less: Expenses paid through Bank Account:		
Truck & autos	18.80	
Charts	14.25	
Commission on Charters	150.00	
Conditioning	732.50	
Gas and oil	2,505.89	
Groceries & Furnishings	576.35	
Hardware supplies	570.87	
Installing Gas Gauge	3.40	
Insurance	1,613.35	
Laundry	146.04	
Plumbing	169.50	
Recording Abstracts, etc.	58.33	
Repairs & Maintenance	2,569.66	
Stationery & Printing	54.00	
Storage	446.41	
Sundry	66.59	
Tolls	73.20	
Uniforms	128.75	
Wages	4,520.85	14,418.74
Cash Balance 12-31-1929		$ 66.76
Other Expenses paid directly by Boulevard Mortgage Company:		
Commission on Charter	350.00	
Gas and Oil	8.38	
Groceries & Furnishings	357.91	
Salaries	300.00	
Storage	11.00	
Sundry	63.34	
Wages	1,022.85	
	2,113.48	
Expenses paid through Bank Account	14,418.74	
Depreciation on Yacht Year 1929	333.32	
Total Debits to Profit & Loss Year 1929	16,865.54	

Note: Adjustment of $14.29 made in Sundry a/c

Item of $150.00 commission on charter shown in expenses and charged to Income Account on ledger.

YEAR 1930

Cash Receipts:

Advances by Boulevard Mortgage Co.	$ 6,400.00	
Proceeds from Charter	4,284.00	$10,68
		$10,75

LESS: Expenses paid through Bank Account:

Charts	4.50	
Gas and Oil	101.55	
Groceries & Furnishings	613.17	
Insurance	1,640.00	
Laundry	32.38	
Repairs & Maintenance	1,233.46	
Storage	652.65	
Sundry	22.00	
Telephone & Telegraph	1.25	
Uniforms	118.99	
Wages	5,954.58	10,374
CASH BALANCE 12-31-1930		376

Disbursements from Petty Cash Fund Outstanding 12-31-29

Gas & Oil	34.72	
Groceries & Furnishings	6.30	
Repairs & Maintenance	262.00	
Storage	133.98	
Wages	63.00	500.00

Other expenses paid by Boulevard Mortgage Co.

Gas & Oil	12.23	
Laundry	123.65	
Repairs & Maintenance	1,164.77	
Storage	156.10	
Sundry	52.50	
Telephone & Telegrams	6.35	
Uniforms	1,074.35	
Wages	1,403.35	3,995.30
		4,495.30
Expenses paid through Bank Account		10,374.53
Depreciation on yacht year 1930		2,000.00
TOTAL EXPENSES YEAR 1930		$16,869.83

YEAR 1931

Cash Receipts:

Advances by Boulevard Mortgage Co.	None	
Proceeds from Charter	None	
		376.23
LESS: Expenses paid through Bank Account:		
Groceries & Furnishings (Ref.)	6.30	
Repairs & Maintenance	135.00	
Sundry	2.75	131.45
CASH BALANCE 6-2-1931		244.78

This balance transferred to Boulevard Mortgage Company—June 2, 1931 by Check #118.

Other Expenses paid by Boulevard Mortgage Company:

Gas and Oil	310.75
Groceries & Furnishings	74.20
Laundry	80.32
Plumbing	22.60
Repairs & Maintenance	2,069.92
Storage	1,316.30
Sundry	69.20
Taxes & Licenses	147.00
Telephone & Telegraph	.95
Wages	3,174.22
	7,265.46
Expenses paid through Bank Account	131.45
Depreciation on Yacht, Year 1931	2,000.00
TOTAL DEBITS TO PROFIT & LOSS, YEAR 1931	$ 9,396.91

YEAR 1932

From this period on Seminole Boat Company's operating expenses were paid by the Boulevard Mortgage Company and Palm Beach Company.

Expenses paid by Boulevard Mortgage Company:

Truck and Auto expenses	14.30
Gas & Oil	1.40
Groceries & Furnishings	793.72
Hardware Supplies	220.06
Insurance	268.51
Laundry	7.50
Repairs & Maintenance	396.68
Storage	1,507.78
Sundry	72.60
Taxes & Licenses	116.00
Telephone & Telegraph	3.50
Wages	632.57
	4,034.62
Depreciation on Yacht, Year 1932	2,000.00
TOTAL DEBITS TO PROFIT & LOSS, YEAR 1932	$ 6,034.62

YEAR 1933

Expenses paid by Boulevard Mortgage Company:

Hardware	37.41
Insurance	116.51
Plumbing	43.00
Repairs & Maintenance	696.53
Storage	744.18
Taxes & Licenses	145.55
Telephone & Telegraph	4.50
Wages	147.50
	1,702.16
Depreciation on Yacht, Year 1933	2,000.00
TOTAL DEBITS TO PROFIT & LOSS, YEAR 1933	$ 3,702.16

YEAR 1934

Expenses paid by Palm Beach Company:

Gas & Oil	269.55
Groceries & Furnishings	24.61
Hardware Supplies	87.05
Laundry	8.55
Plumbing	99.66
Repairs & Maintenance	621.04
Salaries	762.14
Storage	607.26
Sundry	177.66
Taxes & Licenses	121.86
Telephone & Telegraph	4.75
	$ 2,784.13
Depreciation on Yacht, Year 1934	2,000.00
TOTAL DEBITS TO PROFIT & LOSS YEAR 1934	$ 4,784.13

YEAR 1935

Expenses paid by Palm Beach Company:

Gas & Oil	110.90
Insurance	129.20
Repairs & Maintenance	623.36
Salaries & Wages	659.75
Medical Expense—Seminole Fire	2,378.43
Storage	367.88
Sundry	540.99
Taxes & Licenses	53.01
Expenses—re R. C. Abel	610.00
Groceries & Furnishings	29.84
	5,503.36
Loss of Boat Seminole by fire on June 24, 1935	9,166.68
TOTAL DEBITS TO PROFIT & LOSS YEAR 1935	$14,670.04

All disbursements by Boulevard Mortgage Company and Palm Beach Company have been reimbursed by Messrs. J. S. and H. C. Phipps excepting those disbursements by Palm Beach Company for period May 1, 1935 through December 31, 1935, totaling $400[illegible]. This is Accounts Payable to Palm Beach Company on Seminole Boat Company records.

CONTINUATION OF ANALYSIS OF SEMINOLE BOAT COMPANY

Period

January 1, 1936 through September 30, 1938

Year 1936

Expenses paid by Palm Beach Company:

Taxes	$ [illegible]
Medical Expenses—Seminole Fire	2,854.[illegible]
Repairs and Maintenance	64.[illegible]
Sundry	5,023.[illegible]
Total Debits to Profit & Loss Year 1936	$7,952.[illegible]

Note: The Prigg Cabin Boat was sold on May 5th, 1936, the proceeds of $950.00 was credited to Seminole Boat Company on Books of Palm Beach Company.

The net liability of Seminole Boat Company for year 1936 is $7,002.81.

Year 1937:

Expenses paid by Bessemer Properties, Incorporated:

Medical expenses—Seminole Fire	$ 988.[illegible]
Taxes	10.[illegible]
Sundry	10.[illegible]
Total Debits to Profit & Loss Year 1937	$1,008.[illegible]

Note: Palm Beach Company was consolidated on January 1st, 1937. The new company is Bessemer Properties, Incorporated.

Year 1938: (Part)

Expenses paid by Bessemer Properties, Incorporated:	
Medical expenses—Seminole Fire	$ 600.00
Taxes	15.00
TOTAL DEBITS FOR EXPENSES TO 9-30-38	$ 615.00

ANALYSIS OF BOULEVARD MORTGAGE COMPANY AND PALM BEACH COMPANY ACCOUNTS WITH SEMINOLE BOAT COMPANY FOR PERIOD OCTOBER 1928 THROUGH DECEMBER 31, 1936.

		Dr.	Cr.
Year 1928—Boulevard Mortgage Co.			
Cash Advances		$400.00	
Expenses Paid		276.56	$ 676.56
Year 1929—Boulevard Mortgage Co.:			
Cash Advances		9,850.00	
Cash a/c Receivable Sundry		2,004.51	
Expenses Paid		2,113.48	13,967.99
TOTAL FOR YEARS 1928-1929			$14,644.55
Boulevard Mortgage Company was reimbursed for years 1928 and 1929—the following accounts receiving credit:			
3-25-29	Cash a/c Seminole Boat Co.	1,200.00	
4-2-29	" " " "	3,500.00	
6-7-29	" " " "	1,000.00	
10-31-29	Mr. H. C. Phipps	2,479.37	
10-31-29	Mr. J. S. Phipps	2,479.37	
12-31-29	Mr. H. C. Phipps	489.12	
12-31-29	Mr. J. S. Phipps	3,496.69	14,644.55

		Dr.	
Year 1930—Boulevard Mortgage Co.			
Cash Advances	6,400.00		
Expenses Paid	3,995.30		$10,3
Boulevard Mortgage Company was reimbursed for year 1930—the following accounts receiving credit:			
4-30-30—Mr. J. S. Phipps	1,877.93		
4-30-30 Mr. H. C. Phipps	1,877.94		
6-30-30 Mr. J. S. Phipps	1,701.19		
6-30-30 Mr. H. C. Phipps	1,701.19		
12-31-30 Mr. J. S. Phipps	1,618.53		
12-31-30 Mr. H. C. Phipps	1,618.52	10,395.30	
Year 1931—Boulevard Mortgage Co.			
Cash Advances	None		
Expenses Paid			$ 7,2
Boulevard Mortgage Company was reimbursed in part for 1931—the following accounts receiving credit:			
6-2-31—Cash—Seminole Boat Co.	244.78		
6-30-31 Mr. J. S. Phipps	3,098.14		
6-30-31 Mr. H. C. Phipps	3,098.14		
12-31-31 Mr. J. S. Phipps	374.70		
12-31-31 Mr. H. C. Phipps	374.70		
	7,190.46		
Balance not reimbursed	75.00	7,265.46	

		Dr.	Cr.
Year 1932—Boulevard Mortgage Co.			
Balance Forward	$ 75.00		
Expenses Paid	4,034.62		$ 4,109.62
Boulevard Mortgage Company was reimbursed for 1932—the following accounts receiving credit:			
6-30-32—Mr. J. S. Phipps	896.49		
6-30-32 Mr. H. C. Phipps	896.49		
12-31-32 Mr. J. S. Phipps	1,158.32		
12-31-32 Mr. H. C. Phipps	1,158.32	4,109.62	
Year 1933—Boulevard Mortgage Co.			
Expenses Paid			$ 1,702.16
Boulevard Mortgage Company was reimbursed for 1933—the following accounts receiving credit:			
6-30-33—Mr. J. S. Phipps	478.78		
6-30-33 Mr. H. C. Phipps	478.78		
12-30-33 Mr. H. C. Phipps	372.30		
12-30-33 Mr. J. S. Phipps	372.30	1,702.16	
From this point on disbursements were made by Palm Beach Company for Seminole Boat Company.			
Year 1934—Palm Beach Company.			
Expenses Paid			$ 2,784.13
Palm Beach Company was reimbursed for 1934 in part the following accounts receiving credit:			
12-31-34—Mr. H. C. Phipps	1,022.38		
12-31-34 Mr. J. S. Phipps	1,022.38		
	2,044.76		
Balance not reimbursed	739.37	2,784.13	

		Dr.	Cr.
Year 1935—Palm Beach Company			
Balance Forward	739.37		
Expenses, etc., paid	6,453.36		$ 7,192
Palm Beach Company was reimbursed as follows during 1935 the following accounts receiving credit:			
2-20-35 Mr. H. C. Phipps	369.69		
2-20-35 Mr. J. S. Phipps	369.68		
6-22-35 Mr. J. S. Phipps	1,224.91		
6-22-35 Mrs. F. E. Guest	1,224.90		
	3,189.18		
Balance not reimbursed	4,003.55	7,192.73	

	Dr.	Cr.
AR 1936—Palm Beach Company		
Balance outstanding Jan. 1936 not reimbursed		$ 4,003.55

mmary of reimbursements by Mr. J. S. Phipps, Mr. H. C. Phipps and Mrs. F. E. Guest for disbursements made by Boulevard Mortgage Co. and Palm Beach Company for account Seminole Boat Company. Seminole Boat Company has now transferred its liability from Boulevard Mortgage Co. and Palm Beach Company to the Messrs. Phipps and Mrs. F. E. Guest according to the following:

	Mr. J. S. Phipps	Mr. H. C. Phipps	Mrs. F. E. Guest
October 31, 1929	$ 2,479.37	$ 2,479.37	$
December 31, 1929	3,496.69	489.12	
October 31, 1929 (adj.)	300.00	300.00	
October 31, 1929 (adj.)	1,920.13	1,920.13	
December 31, 1929 (adj.)	393.72	393.72	
October 31, 1929 (adj.)	1,110.07	1,110.07	
October 31, 1929	5,000.00	5,000.00	
April 30, 1930	1,877.93	1,877.94	
June 30, 1930	1,701.19	1,701.19	
December 31, 1930	1,618.53	1,618.52	
June 30, 1931	3,098.14	3,098.14	
December 31, 1931	374.70	374.70	
June 30, 1932	896.49	896.49	
December 31, 1932	1,158.32	1,158.32	
June 30, 1933	478.78	478.78	
December 30, 1933	372.30	372.30	
December 31, 1934	1,022.38	1,022.38	
February 20, 1935	369.68	369.69	
	12,440.72	12,440.72	
Mrs. F. E. Guest on 3/23/35 purchased Mr. H. C. Phipps' ½ interest		12,440.72	12,440.72
June 22, 1935	1,224.91		1,224.90
Balance December 31, 1935	$13,665.63	—	$13,665.62

* Increase in Capital stock

Appendix B.

Statutes with respect to limitation of liability of shipowners:

A. Statute as of June 24, 1935:

The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. (R. S. 4283—U. S. C. title 46, sec. 183.)

Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel, in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (R. S. 4284, Feb. 27, 1877—U. S. C. title 46, sec. 184.)

It shall be deemed a sufficient compliance on the part of such owner with the requirements of this Title [R. S. 4131-4305] relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in such vessel and freight for the benefit of such claimants to a trustee, to be appointed by any court of competent jurisdiction to act as such trustee for the

person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease. (R. S. 4285—U. S. C. title 46, sec. 185.)

The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense or by his own procurement shall be deemed the owner of such vessel within the meaning of the provisions of this Title [R. S. 4131-4305] relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof. (R. S. 4286—U. S. C. title 46, sec. 186.)"

B. Statute as amended August 29, 1935.*

"(R. S. 4283-46 U. S. C. 183) The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending. PROVIDED, That the total liability of the owner or owners of any sea-going sailing, steam, or motor vessel, whether American or foreign, other than tugs, barges, fishing vessels and their tenders, for the entire loss of life or personal injuries caused without the fault or privity of such owner or owners to any person, shall be in an amount not less than an amount equal to $60 for each ton of the tonnage of such vessel or vessels, or the amount or value of the interest of such owner in such vessel and her freight then pending, if the latter be the greater amount. The tonnage of a steam or motor vessel shall

* Section R. S. 4283A relating to stipulations limiting time for filing claims and commencing suits omitted.

be her gross tonnage without deduction on account of engine room, and the tonnage of a sailing vessel shall be her registered tonnage, provided that there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use. The owner of every sea-going vessel or share therein shall be liable in respect of every such loss of life or personal injury arising on distinct occasions to the same extent as if no other loss or injury had arisen. (Aug. 29, 1935, sec. 1.)

(R. S. 4283-46 U. S. C. 183a.) In respect of loss of life or bodily injury, the actual privity or knowledge of the master of a sea-going vessel (other than tugs, barges, fishing vessels and their tenders), or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel. (Aug. 29, 1935.)

* * *

(R. S. 4284-46 U. S. C. 184.) Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel, in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (Feb. 27, 1877.)

* * *

(R. S. 4286-46 U. S. C. 186.) The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense or by his own procurement, shall be deemed the owner of such vessel within

the meaning of the provisions of this Title [R. S. 4131-4305] relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof."

C. Statute as amended June 5, 1936.*

"R. S. 4283 (46 U. S. C. 183.) (a) The liability of the owner of any vessel, whether American or foreign for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be

* Section R. S. 4283A relating to stipulations limiting time for filing claims and commencing suit, and Section R. S. 4283B relating to stipulations limiting liability for negligence omitted.

her registered tonnage: PROVIDED, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life, or bodily injury, the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 4283 A [see p. 303], the term 'seagoing vessel' shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 4289 of this chapter, as amended. (Aug. 29, 1935; sec. 1; June 5, 1936, sec. 1.)

* * *

APPORTIONMENT OF COMPENSATION.

R. S. 4284. (46 U. S. C. 184.) Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel, in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel,

or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (Feb. 27, 1877.)

TRANSFER OF INTEREST OF OWNER TO TRUSTEE.

R. S. 4285 (46 U. S. C. 185). The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter, as amended, and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount, or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 4283, as amended, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 4283, as amended. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease. (June 5, 1936, sec. 3.)

CHARTERER MAY BE DEEMED OWNER.

R. S. 4286 (46 U. S. C. 186). The charterer of any vessel, in case he shall man, victual, and navigate such vessel at his own expense or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this Title [R. S. 4131-4305] relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof."